

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

TONY JENNINGS,

Plaintiff,

DECLARATION

**Civil Action No.: 5:17-cv-54
(LEK/TWD)**

**JEREMY DECKER, DARRIN ETTINGER
ROBERT OCKER, and CITY of SYRACUSE,**

Defendants.

I, Christina F. DeJoseph, Esq., 28 U.S.C. § 1746, declare, under the penalty of perjury, the following to be true to the best of my knowledge:

1. I am an attorney duly licensed to practice law before the Courts of the State of New York and admitted to practice before the United States District Court of the Northern District Court of New York. I am an Assistant Corporation Counsel for the City of Syracuse.

2. I represent defendants, Jeremy Decker (“Decker”), Darrin Ettinger (“Ettinger”), and the City of Syracuse (the “City”) (collectively, “Defendants”) in the above-entitled action.

3. I am sufficiently familiar with the facts and circumstances of this civil action to make this declaration and have personal knowledge of the matters set forth herein.

4. This declaration and the exhibits annexed hereto are submitted in support of Defendants’ motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure.

RELEVANT PROCEDURAL HISTORY

5. Plaintiff commenced this federal action *pro se* by the filing of a Complaint on January 19, 2017, and thereafter summonses were issued on June 6, 2017. (See Dkt. Nos. 1, 17).

6. Defendants joined issue by filing an Answer on July 5, 2017, which denied the material allegations set forth in the Complaint. (See Dkt. No. 18).

7. On June 29, 2018, Defendants filed a motion for summary judgment. (See Dkt. Nos. 53, 56-57).

8. On January 17, 2019, this Court issued a Memorandum-Decision and Order which granted in part and denied in part Defendants' motion. (See Dkt. No. 62).

9. More specifically, the following of claims and/or parties were dismissed from this action: (1) Plaintiff's Fourth Amendment illegal search claim against Decker and Ettinger; (2) Plaintiff's Fourth Amendment false arrest claim against Decker and Ettinger; (3) Plaintiff's § 1985(3) conspiracy claim against Decker, Ettinger, and Ocker; (4) Plaintiffs § 1983 conspiracy claim against Decker, Ettinger, and Ocker; (5) Sergeant Robert Ocker was dismissed as a Defendant in this action. (See Dkt. No. 62).

10. The following claims survived Defendants' motion: (1) Plaintiff's Fourteenth Amendment racial profiling claim against Decker and Ettinger; (2) Plaintiff's *Monell* claim against the City of Syracuse; and (3) Plaintiff's Fourth Amendment excessive force claim against Decker and Ettinger. (See Dkt. No. 62).

11. Thereafter, Plaintiff was assigned *pro bono* counsel. (See Dkt. Nos. 71, 72). Plaintiff's counsel thereafter sought and obtained permission to re-open discovery in this matter. (See Dkt. Nos. 75, 80).

12. The parties subsequently engaged in extensive discovery and requested assistance from the Court to determine its appropriate scope. This Court issued several orders relative to the

same, as well as the nature and scope of Plaintiff's *Monell* claim against the City. (See Dkt. Nos. 90-98, 101-102, 104-105, 110, TEXT Order dated 1/10/2020, 107, 108, 111, 117, 118).

13. As relevant to the instant motion, by Text Order dated January 21, 2020, this Court found that Plaintiff's *Monell* claim is premised upon his 14th Amendment Racial Profiling claim and is based upon an alleged improper policy, custom or practice of racial profiling and/or failure to train, discipline or supervise officers with respect to the same. (See Dkt. Nos. 107, 108, 111).

14. On or about February 11, 2020, the Onondaga County Justice Center served certified records of recordings of telephone calls made by Plaintiff in response to a judicial subpoena *duces tecum* (see Dkt. No. 118) for the same. A copy of the Certification and Delegation of Authority is attached as **Exhibit "A"**. A true copy of the discs produced by the Justice Center in response to the subpoena will be traditionally filed with the clerk of the Court as **Exhibit "B-1"** and **"B-2"**.

15. Thereafter, this Court issued a Text Order permitting Defendants to file a dispositive motion as to all of Plaintiff's remaining claims. (See Dkt. No. 123).

16. In that regard, the following additional relevant documents are annexed to this declaration:

- a. **Exhibit "C"**: photographs taken following the incident on January 5, 2016 (to be traditionally filed);
- b. **Exhibit "D"**: police report relative to Plaintiff's arrest on January 5, 2016;
- c. **Exhibit "E"**: disc containing booking video from the Onondaga County Justice Center (to be filed traditionally);
- d. **Exhibit "F-1"**: Transcript of a suppression hearing in the matter of *People v. Tony W. Jennings* (Index No. 16-0049) before the Hon. Walter W. Hafner, Jr., dated May 17, 2016;

- e. **Exhibit “F-2”:** Transcript of a suppression hearing in the matter of *People v. Tony W. Jennings* (Index No. 16-0049) before the Hon. Walter W. Hafner, Jr., dated May 19, 2016;
- f. **Exhibit “G”:** Decision/Order (Hafner, J.) relative to the suppression hearing (Index No. 16-0049), filed and entered July 14, 2016;
- g. **Exhibit “H-1”:** Volume I of the trial transcript in the matter of *People v. Tony W. Jennings* (Index No. 16-0049);
- h. **Exhibit “H-2”:** Volume II of the trial transcript in the matter of *People v. Tony W. Jennings* (Index No. 16-0049);
- i. **Exhibit “I”:** Transcript of the sentencing hearing in the matter of *People v. Tony W. Jennings* (Index No. 16-0049);
- j. **Exhibit “J”:** Uniform Sentence and Commitment in the matter of *People v. Tony W. Jennings* (Index No. 16-0049);
- k. **Exhibit “K”:** Plaintiff’s Medical records from Onondaga County Justice Center.

17. Several depositions were conducted when discovery was re-opened. Transcripts of the following witness testimony is attached as follows:

- a. **Exhibit “L”:** Defendant Jeremy Decker;
- b. **Exhibit “M”:** Defendant Darrin Ettinger;
- c. **Exhibit “N”:** Plaintiff Tony Jennings;
- d. **Exhibit “O”:** Non-party eye-witness Willie Jones;
- e. **Exhibit “P”:** Non-party witness Robert Ocker;
- f. **Exhibit “Q”:** Non-party witness Frank Fowler.

18. Based on the accompanying Memorandum of Law, this Declaration and annexed exhibits, and Defendants' Statement of Material Facts Not in Dispute, Defendants respectfully request an Order pursuant to Rule 56 of the Federal Rules of Civil Procedure granting the within motion for summary judgment dismissing Plaintiff's Complaint with prejudice and for such other and further relief as the court deems just and proper.

Dated: July 27, 2020
Syracuse, New York

Respectfully submitted,

Kristen E. Smith, Esq.
Corporation Counsel – City of Syracuse

s/Christina F. DeJoseph

By: Christina F. DeJoseph, Esq.
Senior Assistant Corporation Counsel
Bar Roll No.: 514784
Attorney for Defendants
300 City Hall
233 E. Washington Street
Syracuse, New York 13202